

REMARKS

Claims 1-21 and 24-33 are presently pending in the case. Claims 22 and 23 have been cancelled without prejudice or disclaimer, Applicant reserving the right to pursue the claims in a continuing application. Claims 1, 2, 12, 16, 21, 24 and 29 have been amended. The amendments are supported by the specification and claims as originally filed.

Reconsideration of the present case in view of the above amendments and the remarks herein is requested.

Claim rejections under 35 USC 103(a)

The Examiner rejected claims 1-21 and 24-33 under 35 USC §103(a) as being unpatentable over U.S. Patent 5,740,794 to Smith et al (hereinafter Smith et al). The rejection is traversed.

Smith et al does not render independent claim 1, for example, unpatentable. Claim 1 is to a method for forming multiple openings in a receptacle, the method comprising, inter alia, providing a cutting mechanism having multiple blades; piercing the cover of a receptacle with the blades by moving the cutting mechanism in a forward direction; and moving the blades in a direction other than the forward direction to create multiple elongate openings in the cover. Smith et al does not disclose, teach or suggest a cutting mechanism that is moved in a forward direction and blades that are moved in a direction other than the forward direction to create multiple openings in a cover. The Examiner has not provided a teaching or suggestion that would otherwise make up for this deficiency. Thus, the Examiner has not established a prima facie case of obviousness against claim 1.

For at least these reasons, claim 1 is not properly rejectable under 35 USC §103(a) as being unpatentable over Smith et al. The modification that would be

necessary is not one that would have been well within the grasp of one of ordinary skill in the art at the time the invention was made. In this regard, the Examiner has failed to establish that any such modification could be applied, with a reasonable likelihood of success, to Smith et al. There is no evidence to suggest that this is a situation where the ordinary artisan could have modified Smith et al in a manner that would result in the invention of claim 1 and there is no evidence to suggest the artisan would have seen the benefit in doing so. Thus, claim 1 is allowable over the references cited.

Applicant requests withdrawal of the rejection of claim 1 under 35 U.S.C. §103(a). In addition, Applicant requests withdrawal of the rejection of claims 2-11 which depend from claim 1 and are not rendered unpatentable by Smith et al for at least the same reasons as claim 1.

In addition, Smith et al does not render independent claim 12 unpatentable. Claim 12 is to a method for aerosolizing a powder comprising, inter alia, providing a cutting mechanism having an outer blade; piercing the cover of a receptacle by moving the blade in a forward direction; moving the outer blade in a direction other than the forward direction through the cover to cut a portion of the cover to create an outer elongate opening in the cover. Smith et al does not disclose, teach or suggest a cutting mechanism having a blade that is moved in a forward direction and moved in a direction other than the forward direction to create an opening in a cover. The Examiner has not otherwise made up for this deficiency. Thus, the Examiner has not established a prima facie case of obviousness against claim 12.

For at least these reasons, claim 12 is not properly rejectable under 35 USC §103(a) as being unpatentable over Smith et al. The modification that would be necessary is not one that would have been well within the grasp of one of ordinary skill in the art at the time the invention was made. In this regard, the Examiner has failed to establish that any such modification could be applied, with a reasonable likelihood of success, to Smith et al. There is no evidence to suggest that this is a situation where the ordinary artisan could have modified Smith et al in a manner that would result in the

invention of claim 12 and there is no evidence to suggest the artisan would have seen the benefit in doing so. Thus, claim 12 is allowable over the references cited.

Applicant requests withdrawal of the rejection of claim 12 under 35 U.S.C. §103(a). In addition, Applicant requests withdrawal of the rejection of claims 13-20 which depend from claim 12 and are not rendered unpatentable by Smith et al for at least the same reasons as claim 12.

Smith et al also does not render independent claim 21 unpatentable. Claim 21 is to a method for forming multiple openings in a receptacle comprising, inter alia, providing a cutting mechanism having (i) at least one outer blade, and (ii) a tubular body having a distal end with a plurality of inwardly and outwardly facing blades; piercing the cover with the blades; and rotating the cutting mechanism across a distance through the cover to form multiple openings in the cover. Smith et al does not disclose, teach or suggest a cutting mechanism that is rotated to form multiple openings. The Examiner has not otherwise made up for this deficiency. Thus, the Examiner has not established a prima facie case of obviousness against claim 21.

For at least these reasons, claim 21 is not properly rejectable under 35 USC §103(a) as being unpatentable over Smith et al. The modification that would be necessary is not one that would have been well within the grasp of one of ordinary skill in the art at the time the invention was made. In this regard, the Examiner has failed to establish that any such modification could be applied, with a reasonable likelihood of success, to Smith et al. There is no evidence to suggest that this is a situation where the ordinary artisan could have modified Smith et al in a manner that would result in the invention of claim 21 and there is no evidence to suggest the artisan would have seen the benefit in doing so. Thus, claim 21 is allowable over the references cited.

Applicant requests withdrawal of the rejection of claim 21 under 35 U.S.C. §103(a).

Furthermore, Smith et al does not render independent claim 24 unpatentable. Claim 24 is to an aerosolizing apparatus comprising, inter alia, a hole forming device comprising a movable support member capable of being moved through a cover in a forward direction and a moving mechanism to move the support member in a direction other than the forward direction to move a blade through the cover. Smith et al does not disclose, teach or suggest such an aerosolizing apparatus. The Examiner has not otherwise made up for this deficiency. Thus, the Examiner has not established a prima facie case of obviousness against claim 24.

For at least these reasons, claim 24 is not properly rejectable under 35 USC §103(a) as being unpatentable over Smith et al. The modification that would be necessary is not one that would have been well within the grasp of one of ordinary skill in the art at the time the invention was made. In this regard, the Examiner has failed to establish that any such modification could be applied, with a reasonable likelihood of success, to Smith et al. There is no evidence to suggest that this is a situation where the ordinary artisan could have modified Smith et al in a manner that would result in the invention of claim 24 and there is no evidence to suggest the artisan would have seen the benefit in doing so. Thus, claim 24 is allowable over the references cited.

Applicant requests withdrawal of the rejection of claim 24 under 35 U.S.C. §103(a). In addition, Applicant requests withdrawal of the rejection of claims 25-28 which depend from claim 24 and are not rendered unpatentable by Smith et al for at least the same reasons as claim 24.

Smith et al does not render independent claim 29 unpatentable, either. Claim 29 is to an aerosolizing system comprising, inter alia, a hole forming device comprising a movable support member capable of being moved through a cover in a forward direction and a moving mechanism to move the support member in a direction other than the forward direction to move a blade through the cover. Smith et al does not disclose, teach or suggest such an aerosolizing apparatus. The Examiner has not otherwise made up for this deficiency. Thus, the Examiner has not established a prima

facie case of obviousness against claim 29.

For at least these reasons, claim 29 is not properly rejectable under 35 USC §103(a) as being unpatentable over Smith et al. The modification that would be necessary is not one that would have been well within the grasp of one of ordinary skill in the art at the time the invention was made. In this regard, the Examiner has failed to establish that any such modification could be applied, with a reasonable likelihood of success, to Smith et al. There is no evidence to suggest that this is a situation where the ordinary artisan could have modified Smith et al in a manner that would result in the invention of claim 29 and there is no evidence to suggest the artisan would have seen the benefit in doing so. Thus, claim 29 is allowable over the references cited.

Applicant requests withdrawal of the rejection of claim 29 under 35 U.S.C. §103(a). In addition, Applicant requests withdrawal of the rejection of claims 25-28 which depend from claim 29 and are not rendered unpatentable by Smith et al for at least the same reasons as claim 29.

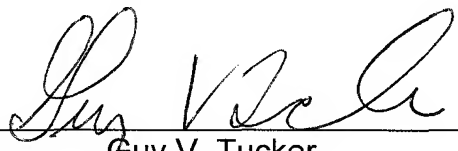
Conclusion

The claims are allowable for the reasons given above. Thus, the Examiner is respectfully requested to reconsider the present rejections and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

JANAH & ASSOCIATES

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